



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **200722029**

Release Date: 6/1/07

Date: March 7, 2007

Contact Person:

Identification Number:

Telephone Number:

UIL 4941.04-00

Taxpayer Identification Number:

Legend:

B =

C =

D =

Dear _____ :

This is in response to your request for a ruling regarding the proposed transaction described below:

You have been recognized as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and have been determined to be a private foundation as defined in section 509(a) of the Code.

B and C are married to one another. B and C have each created a revocable trust. Under the current estate plans of B and C, a significant portion of their respective property will pass to you upon the death of the survivor of B and C.

Pursuant to an agreement (the "Option Agreement"), B and C, and B and C's respective revocable trusts, have granted D an option (the "Option") to purchase shares of D's stock and related assets and ownership interests (the "Option Assets") from B, C, B's revocable trust, C's revocable trust, B's estate, or C's estate upon the death of the survivor of B and C. The Option Agreement provides that D may purchase the Option Assets consisting of D stock for the value of such stock, as determined by a stock valuation report prepared by an independent appraiser, and may purchase other Option Assets for a purchase price equal to the fair market value of such Option Assets as finally determined for federal estate tax purposes with respect to the gross estate of the survivor of B or C. D may exercise the Option at any time during the period beginning on the date of death of the survivor of B and C and ending 15 months thereafter (the "Option Term"). The Option Agreement provides that if D exercises the Option, it must pay the purchase price for the Option Assets by certified check, cash, wire transfer, an installment note ("promissory note") payable in not more than 15 annual installments, or by a combination thereof. The Option Agreement provides that any promissory note must bear interest equal to the greater of the applicable federal rate, compounded annually, and six percent (6%). You represent that the Option will be binding on the survivor's estate or trust under applicable state law.

You represent that during the Option Term, you expect D to exercise the Option and purchase some or all of the Option Assets in the amount of the purchase price to the revocable trust or estate of the survivor of B and C. D would purchase these Option Assets through cash, certified check, wire transfer, a promissory note, or a combination thereof.

With respect to any Option Assets to be purchased from the estate or revocable trust of the survivor of B and C, you state that the executor of that estate or trustee of that revocable trust will petition a court of competent jurisdiction for approval of both D's exercise of the Option and the tendering and receipt of consideration pursuant to the Option Agreement. You state that the exercise of the Option by D, the sale and purchase of Option Assets, and the tendering and receipt of consideration related thereto, will occur before the survivor's estate is considered terminated for federal income tax purposes, and before the survivor's revocable trust is treated as a trust under section 4947 of the Code. You state that the purchase of the Option Assets owned by that estate or revocable trust, pursuant to the Option Agreement, will be contingent upon receipt of approval from a court of competent jurisdiction.

You state that upon the death of the survivor of B and C, the survivor's children will control both you and D, and serve as executors and trustees of the survivor's estate and trust, respectively.

Rulings Requested

1. The exercise of the Option and the purchase of Option Assets from the estate or revocable trust of the survivor of B and C by D, the tendering of consideration by D to that revocable trust or estate, the receipt of such consideration by that revocable trust or estate, and a distribution of such consideration from that revocable trust or estate to D, will satisfy the requirements for the exception to self-dealing described in section 53.4941(d)-1(b)(3) of the Foundation and Similar Excise Taxes Regulations, and therefore will not constitute impermissible acts of self-dealing by you under section 4941 of the Code.
2. Neither (i) your receipt of a promissory note from the estate or revocable trust of the survivor of B and C, nor (ii) your retention of that note and receipt of interest on the note, will constitute direct or indirect acts of self-dealing pursuant to section 53.4941(d)-1 of the regulations, and neither act will violate section 4941 of the Code.

Law

Section 4941(a) of the Code imposes certain excise taxes on direct and indirect acts of self-dealing between a disqualified person and a private foundation, and also imposes a separate excise tax on the participation by any foundation manager in an act of self-dealing between a disqualified person and a private foundation, knowing it is such an act, unless such participation is not willful and is due to reasonable cause.

Section 4941(d)(1) of the Code, in relevant part, provides that the term "self-dealing" includes any direct or indirect--

- (A) sale or exchange, or leasing, of property between a private foundation and a disqualified person;
- (B) lending of money or other extension of credit between a private foundation and a disqualified person; ...and,
- (E) transfer to, or for the use by or for the benefit of, a disqualified person of the income or

assets of a private foundation.

Section 4946(a)(1) of the Code provides, in relevant part, that the term "disqualified person" means, with respect to a private foundation, a person who is—

- (A) a substantial contributor to the foundation,
- (B) a foundation manager, ...or
- (D) a member of the family of any individual described in subparagraphs (A), (B), or (C).

Section 53.4941(d)-1(a) of the regulations provides that, for purposes of section 4941 of the Code, the term "self-dealing" includes any direct or indirect transaction described in section 53.4941(d)-2 of the regulations.

Section 53.4941(d)-2(c) of the regulations provides that the lending of money and other extension of credit between a private foundation and a disqualified person shall constitute an act of self-dealing. For example, an act of self-dealing occurs where a note, the obligor of which is a disqualified person, is transferred by a third party to a private foundation which becomes the creditor under the note, unless the foundation received and holds the note pursuant to a transaction described in section 53.4941(d)-1(b)(3).

Section 53.4941(d)-1(b)(3) of the regulations provides that the term, "indirect self-dealing" shall not include a transaction with respect to a private foundation's interest or expectancy in property (whether or not encumbered) held by an estate (or revocable trust, including a trust which has become irrevocable on a grantor's death), regardless of when title to the property vests under local law, if:

- (i) The administrator or executor of an estate or trustee of a revocable trust either:
 - (a) Possesses a power of sale with respect to the property,
 - (b) Has the power to reallocate the property to another beneficiary, or
 - (c) Is required to sell the property under the terms of any option subject to which the property was acquired by the estate (or revocable trust);
- (ii) Such transaction is approved by the probate court having jurisdiction over the estate (or by another court having jurisdiction over the estate (or trust) or over the private foundation);
- (iii) Such transaction occurs before the estate is considered terminated for federal income tax purposes pursuant to paragraph (a) of section 1.641(b)-3 of the regulations (or in the case of a revocable trust, before it is considered subject to section 4947 of the Code);
- (iv) The estate (or trust) receives an amount which equals or exceeds the fair market value of the foundation's interest or expectancy in such property at the time of the transaction, taking into account the terms of any option subject to which the property was acquired by the estate (or trust); and
- (v) With respect to transactions occurring after April 16, 1973, the transaction either:
 - (a) Results in the foundation receiving an interest or expectancy at least as liquid as the one it gave up,
 - (b) Results in the foundation receiving an asset related to the active carrying out of its exempt purposes, or
 - (c) Is required under the terms of any option which is binding on the estate (or trust).

Analysis for Ruling Request 1

Sections 4941(a) and 4941(d) of the Code impose certain excise taxes on acts of self-dealing between a disqualified person and a private foundation. Upon the death of the survivor of B and C, the survivor's estate and revocable trust, the survivor's children, and D will be disqualified persons as to you under section 4946(a)(1) of the Code. Section 4941(d) of the Code and section 53.4941(d)-1(a) of the regulations provide that the term "self-dealing" includes certain direct or indirect transactions. Section 53.4941(d)-1(b) of the regulations describes certain transactions that are excluded from the term "indirect self-dealing." One such exclusion involves transactions during the administration of an estate or revocable trust, provided that all of the requirements in section 53.4941(d)-1(b)(3) of the regulations are satisfied.

The estate or revocable trust of the survivor of B and C will have the express authority (through the executor or trustee) to sell the Option Assets pursuant to the Option Agreement, and will be required to sell the Option Assets if the option is exercised. See section 53.4941(d)-1(b)(3)(i) of the regulations. You state that the exercise of the Option and the underlying transfer and receipt of property will be approved by a court of competent jurisdiction as a condition of the transaction closing. See section 53.4941(d)-1(b)(3)(ii) of the regulations. You state that the exercise of the Option, the sale of the Option Assets and the tendering and receipt of related consideration will occur before the estate is considered terminated for federal income tax purposes, or in the case of the survivor's revocable trust, before it is considered subject to section 4947 of the Code. See section 53.4941(d)-1(b)(3)(iii) of the regulations. The Option Agreement also provides that B is required to pay consideration equal to the fair market value of the Option Assets as determined for federal estate tax purposes. See section 53.4941(d)-1(b)(3)(iv) of the regulations. Finally, the transaction will be conducted pursuant to an option that will be binding on the survivor's estate under state law, thereby satisfying section 53.4941(d)-1(b)(3)(v)(c) of the regulations.

Accordingly, the contemplated exercise of the Option by D and subsequent purchase of the Option Assets by D from the estate or revocable trust of the survivor of B and C within the period of the Option Term as described above will satisfy the requirements in section 53.4941(d)-1(b)(3) of the regulations. Therefore, these transactions will not constitute impermissible acts of self-dealing for purposes of sections 4941(a) and 4941(d)(1) of the Code.

Analysis for Ruling Request 2

Section 53.4941(d)-1(a) of the regulations states that the term "self dealing" means any direct or indirect transaction described in section 53.4941(d)-2. Section 53.4941(d)-2(c) provides that the lending of money and other extension of credit between a private foundation and a disqualified person shall constitute an act of self-dealing. For example, an act of self-dealing occurs where a note, the obligor of which is a disqualified person, is transferred by a third party to a private foundation which becomes the creditor under the note. However, section 53.4941(d)-2(c) also provides that such a transfer of a note to a private foundation does not constitute self-dealing if the foundation received and holds the note pursuant to a transaction described in section 53.4941(d)-1(b)(3).

If you receive a note from the trust or estate of the survivor of B or C, you would do so pursuant to the transaction described above, one that is described in section 53.4941(d)-1(b)(3) of the

regulations. Accordingly, even though D, a disqualified person as to you, would be the obligor under that note and make annual interest payments to you, this arrangement would not constitute direct or indirect self-dealing under section 53.4941(d)-2(c). Therefore, neither your receipt of a promissory note from the estate or revocable trust of the survivor of B and C, nor your retention of that note and receipt of interest on the note, will constitute direct or indirect acts of self-dealing pursuant to section 53.4941(d)-1 of the regulations, and neither act will violate section 4941 of the Code.

Rulings

1. The exercise of the Option and the purchase of Option Assets from the estate or revocable trust of the survivor of B and C by D, the tendering of consideration by D to that revocable trust or estate, the receipt of such consideration by that revocable trust or estate, and a distribution of such consideration from that revocable trust or estate to D, will satisfy the requirements for the exception to self-dealing described in section 53.4941(d)-1(b)(3) of the Foundation and Similar Excise Taxes Regulations, and therefore will not constitute impermissible acts of self-dealing by you under section 4941 of the Code.

2. Neither (i) your receipt of a promissory note from the estate or revocable trust of the survivor of B and C, nor (ii) your retention of that note and receipt of interest on the note, will constitute direct or indirect acts of self-dealing pursuant to section 53.4941(d)-1 of the regulations, and neither act will violate section 4941 of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Steven Godnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure:

cc: